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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,572	05/01/2002	Louis V. Pinkham	Pinkham-767RE	3869

7590 09/30/2003

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EXAMINER

RIVELL, JOHN A

ART UNIT	PAPER NUMBER
3753	

DATE MAILED: 09/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	PINKHAM, LOUIS V.
Examiner John Rivell	Art Unit 3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 01 May 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 01 May 2002 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

The preliminary amendment filed May 1, 2002 with the application, incorporating changes necessary to correct the "error" alleged in this reissue application has been considered for the purposes of this action but it has not been entered because it is improper. Amendments in Reissue applications are not proper under 37 CFR 1.121 but rather must be filed under, and follow the prescribed directions in, 37 CFR 1.173.

The amendatory matter must be resubmitted under 37 CFR 1.173.

35 U.S.C. 251 Reissue of defective patents.

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Director shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue. The Director may issue several reissued patents for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents. The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent. No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent. (Amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

§ 1.173 Reissue specification, drawings, and amendments.

(a) Contents of a reissue application . An application for reissue must contain the entire specification, including the claims, and the drawings of the patent. No new matter shall be introduced into the application. No reissue patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent, pursuant to 35 U.S.C. 251.

Claims 1-20 are rejected under 35 U.S.C. 251 as the amendment to the application introduces new matter to the application.

Specifically, the amendment to the specification to the first full paragraph at column 4, line 9, and specifically at lines 7-8 of that paragraph, the change from "Fluid entering any of the ports encounters a chamber and channels leading to three diverter valves" to -- Fluid entering any of the ports encounters a chamber and channels leading to at least two diverter valves—contains new matter because of the open ended phrase "at least two". The phrase "at least two" encompasses all of the possibilities of the originally filed patent in that fluid entering any of the ports 50, 52, 54, 56 passes to, at minimum two (ports 52 and 56) diverter valves and at maximum three (port 50, fluid is not plumbed to enter port 54) diverter valves. The phrase "at least three" is open ended. It implies that there can be fluid flowing to more than two diverter valves. Any number of diverter valves greater than three is not encompassed by the original patent. Thus, for example, fluid flowing to five diverters is encompassed by the language added to the specification but not supported by the original patent. As the original patent fails to support the disclosure as is now presented, all claims are rejected in view of the new matter added to the specification.

Applicant should also note that this is the exact "error" cited on the current oath. Clearly it is improper to allege "error" within the meaning of reissue on the basis of a desire to add new matter to the application.

Claims 1-20 are otherwise allowable and this application would be in condition for allowance upon appropriate correction of the above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (703) 308-2599. The examiner can normally be reached on Mon.-Thur. from 6:30am-5:00pm..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Bertsch can be reached on (703) 308-0861. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

  
John Rivell  
Primary Examiner  
Art Unit 3753

j.r.